

§ 648.52

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not use or have more than one dredge on board.

(3) The vessel may have no more than five people, including the operator, on board.

(f) *Restrictions on use of trawl nets.* (1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets unless such vessel has on board a valid letter of authorization or permit that endorses the vessel to fish for scallops with trawl nets.

(2) *Replacement vessels.* A vessel that is replacing a vessel authorized to use trawl nets to fish for scallops under scallop DAS may also be authorized to use trawl nets to fish for scallops under scallop DAS if it meets the following criteria:

(i) Has not fished for scallops with a scallop dredge after December 31, 1987; or

(ii) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through Decem-

ber 31, 1994, has an engine horsepower no greater than 450.

EFFECTIVE DATE NOTE: At 69 FR 35215, June 23, 2004, § 648.51(b)(3)(ii) was added, effective Dec. 23, 2004.

§ 648.52 Possession and landing limits.

(a) Except as provided in paragraph (e) of this section, owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10 or that have used up their DAS allocations, and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops with no more than one scallop trip of 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops, allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for, possessing or landing per trip more than the sea scallop possession and landing limit specified in § 648.60(a)(4).

(d) Owners or operators of vessels issued limited access or general category scallop permits fishing in or transiting the area south of 42°20'N. Latitude at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for

Fishery Conservation and Management

§ 648.53

each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or Occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(b) *Open area DAS allocations.* (1) Total DAS to be used in all areas other than those specified in §§ 648.58 and 648.59 will be specified through the framework process as specified in § 648.55.

(2) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated, for each fishing year, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category, after deducting research and observer DAS set-asides from the total DAS allocation. A vessel whose owner/operator has declared it out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its allocated DAS, may leave port without being assessed a DAS, as long as it does not possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops and complies with all other requirements of this part. The annual DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2004 ¹	2005	2006
Full-time	42	117	152
Part-time	17	47	61
Occasional	4	10	13

¹ Unless additional DAS are allocated as specified in paragraph (b)(4) of this section.

(3) Prior to setting the DAS allocations specified in paragraph (b)(2) of this section, one percent of total available DAS will be set aside to help defray the cost of observers, as specified in paragraph (h)(i) of this section. Two percent of total available DAS will be set aside to pay for scallop related research, as outlined in paragraph (h)(ii) of this section.

(4) *Additional 2004 DAS.* Unless a final rule is published in the FEDERAL REGISTER by September 15, 2004, that implements a framework action allowing

access by scallop vessels to portions of the Northeast multispecies closed areas specified in § 648.81(a), (b), and (c), the DAS allocations for the 2004 fishing year, beginning on September 15, 2004, shall increase by the following amounts:

DAS category	2004 DAS increase
Full-time	20
Part-time	8
Occasional	1

(c) *Sea Scallop Access Area DAS allocations.* Limited access scallop vessels fishing in a Sea Scallop Access Area specified in § 648.59, under the Sea Scallop Area Access Program specified in § 648.60, are allocated a total of four trips, at a DAS charge of 12 DAS per trip regardless of actual trip length, to fish only within the Sea Scallop Access Areas. Limited access scallop vessels may fish a maximum number of trips and associated DAS in each Sea Scallop Access Area, as specified in § 648.60(a)(3). Trips taken in each Sea Scallop Access Area are deducted from the total trip and DAS allocation for Sea Scallop Access Areas. As an example, if the total number of trips that a scallop vessel may take is 2 trips, and there are 2 Sea Scallop Access Areas opened to controlled fishing, with Area A having a maximum of one trip and Area B having a maximum of 2 trips, the vessel may take one trip in Area A and one trip in Area B, or both of its total allocated trips in Area B.

(d) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. Except for DAS for the 2006 fishing year, if a biennial framework action is not undertaken by the Council and enacted by NMFS, the allocations from the most recent fishing year will continue. The Council must determine whether or not the 2006 DAS allocations specified in the table in paragraph (b)(4) of this section are sufficient to achieve OY. The 2006 DAS must be adjusted in the first biennial framework, initiated in 2005, if it is determined that the 2006 DAS allocations are unable to achieve OY in the 2006

fishing year. The Council may also adjust DAS allocations through a framework action at any time, if deemed necessary.

(e) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in §648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

(f) *Accrual of DAS.* Unless the vessel is carrying an observer and is authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (h)(1) of this section, and unless participating in the Area Access Program described in §648.60, DAS shall accrue to the nearest minute.

(g) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(h) *DAS set-asides—(1) DAS set-aside for observer coverage.* As specified in paragraph (b)(3) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS will be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2004 and 2005 fishing years are 117 DAS and 304 DAS, respectively. On September 15, 2004, the 2004 DAS set-aside will increase by 54 DAS if a final rule is not published that allows access to the Georges Bank groundfish closed areas. Vessels carrying an observer will be compensated with reduced DAS accrual rates for each trip on which the vessel carries an

observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS will accrue at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor will be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside will be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners will be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry an observer will not be waived due to the absence of additional DAS allocation.

(2) *DAS set-aside for research.* As specified in paragraph (b)(3) of this section, to help support the activities of vessels participating in certain research, as specified in §648.56; the DAS set-aside for research for the 2004 and 2005 fishing years are 233 DAS and 607 DAS, respectively. Vessels participating in approved research will be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS will be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, as appropriate.

§ 648.54 State waters exemption.

(a) *Limited access scallop vessel exemption.* (1) *DAS requirements.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in §648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (d) through (g) of this section.

(2) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of §648.53(b) under paragraph (a) of this section is also exempt from the gear restrictions